

Federal Communications Commission (FCC)
Office of the Secretary
445 12th Street SW,
Washington, DC 20554

**RE: FIBERLIGHT, LLC. APPEAL OF USAC's IMPROPERLY DISBURSED FUNDS
DECISION**

CC Docket Number:	02-6
WC Docket No.	13-184
Date of USAC Notification:	March 27, 2015
USAC Funding Request Number (FRN):	2459815
Form 471 Application Number:	904079
Billed Entity Name:	Ballinger Independent School District (BISD)
Billed Entity Number:	141151
Billing Account Number:	3253653588

To whom this may concern,

FiberLight, LLC. ("FiberLight") was notified by Universal Service Administrative Company ("USAC") via letter, dated March 27, 2015, of USAC's decision that FiberLight improperly disbursed funds. USAC's notification letter is attached hereto as **Exhibit A**. In response to the USAC's decision and notification letter, **FIBERLIGHT DENIES ANY AND ALL PURPORTED VIOLATIONS, AND APPEALS THE DECISION WITH ADEQUATE SUPPORTING DOCUMENTATION FOUND HEREIN.**

SUMMARY

FiberLight won a bid to service Ballinger Independent School District ("BISD") prior to USAC's relationship with BISD. FiberLight was delayed in delivering the service, and as a result, BISD incurred significant excess expenses. FiberLight's alleged breach of contract with BISD and the subsequent excess expenses arose prior to USAC's involvement or relationship with BISD, and therefore the excess expenses were unrelated to and not covered by USAC / eRate program.

FiberLight and BISD reached a settlement agreement for FiberLight's alleged breach of contract. FiberLight agreed to cover the expenses BISD incurred prior to USAC's relationship with BISD and FiberLight. FiberLight and BISD agreed that a "credit" for service was an acceptable means to repay BISD for the excess expenses that it incurred. This method was favored by both

parties as opposed to paying the total amount owed in one transaction.

Prior to applying “credit,” FiberLight sought advice from USAC’s Help Desk, and was informed that “[t]he proposed method of recovering credits from future services owed does not present a rule issue.” USAC Help Desk Response, attached hereto as **Exhibit B**. FiberLight, Relying on the advice from USAC, began to credit BISD for the excess expenses BISD incurred prior to USAC’s relationship with BISD and FiberLight. In short, as oppose to paying the full amount of the settlement agreement, FiberLight would apply a monthly credit until the total settlement amount was satisfied. *The credits are part of a settlement agreement, and are in no way related to or involves USAC / eRate program. Therefore, FiberLight was well within the rules of USAC / eRate program, and does not owe USAC money, credit, or reimbursement*

STATEMENT OF FACTS

BISD submitted a Request for Proposals (“RFP”) on December 7, 2012 (attached hereto as **Exhibit C**). FiberLight placed a bid and subsequently was awarded the deal at the completion of the RFP and bidding process on February 13, 2013. Based on the agreement between FiberLight and BISD, FiberLight was to install and provide service June of 2013, and BISD was to accept and receive billing as of July 1, 2013. Ballinger Funding Commitment Letter 2013, attached hereto as **Exhibit D**. FiberLight’s construction crews ran into significant geographical and geological challenges when building-out our fiber services to the 802 Conda Ave, Ballinger, TX 76821 location. The density of the terrain surrounding BISD required significantly heavier drilling / boring to reach the location than previously anticipated. As a result, FiberLight was unable to deliver the service by the agreed upon date. Actual service was delivered August of 2013, and billing began September 1, 2013.

During the delay period, July 2013 through August 2013, BISD incurred significant excess fees outside of and prior to USAC’s relationship with BISD and FiberLight. BISD incurred additional fees when they were required to hire contract-engineering services to assist FiberLight in installing our services. BISD also incurred additional fees in order to maintain internet services from their previous vendor. As such, BISD was forced to pay their previous Internet Service Provider for month-to-month rates for two months at significantly higher rates prior to USAC’s relationship with BISD and FiberLight. Significantly, the previous vendor was paid independently by BISD, without any USAC funding, discount, or reimbursement. The damages incurred amounted to \$18,434.84 (“Outside Program Expenses”) as depicted by BISD Expense Invoice, attached hereto as **Exhibit E**. A timetable for clarity and convenience is as follows:

ACTION	DATE(S)	USAC INVOLVED/ RELATIONSHIP ESTABLISHED
BISD issues request for proposals	December 7, 2012	NO
FiberLight is awarded the BISD contract	February 13, 2013	NO

FiberLight delayed / alleged breach of contract	July & August	NO
BISD required to pay excess fees to Internet Service Provider and contract-engineering services due to FiberLight's delay	July & August	NO
FiberLight delivers service	September	YES

The RFP stipulated the significance of delays to delivery and the potential liability of the vendor. The Delivery on Schedule provision of the RFP provides,

Delivery on schedule is critical to the success of this contract. The ability to deliver as specified in the invitation for proposals will be a factor in making awards. A vendor who fails to make delivery according to terms of the purchase order may be liable for actual damages suffered by the District. (Emphasis added).

Request for Proposals (Exhibit C), at 4. In order to make BISD whole, FiberLight and BISD reached a settlement agreement for the Outside Program Expenses BISD incurred due to FiberLight's delay. To be clear, the Outside Program Expenses covered by the settlement agreement were: (1) the result of actions occurring prior to and outside of the USAC relationship with BISD and FiberLight; (2) paid solely by BISD prior to the USAC relationship with BISD and FiberLight; and (3) paid for by BISD without any funding, assistance, or discounts from USAC / eRate program. USAC is not a party to the settlement agreement and has no claim regarding the settlement agreement between BISD and FiberLight.

Considering the limitations of FiberLight's system, and taking into account input from USAC's help desk, FiberLight split the BISD portion owed from the USAC eRate portion, and invoiced BISD for just the portion of the fees that they owed FiberLight. FiberLight Invoices to BISD attached hereto as **Exhibit F**. BISD's Fee breakdown table is as follows:

BISD total Recurring Fees	\$4,300.00
USAC / eRate Discount Percent	78%
USAC / eRate Portion of Fee	\$3,311.00
BISD Obligation Percent	22%
<i>BISD Obligation</i>	<i>\$989.00</i>

BISD Fee Breakdown Table

Based on the BISD Fee Breakdown Table, BISD's sole responsibility is \$989.00. It was the intention of both BISD and FiberLight, as part of the settlement agreement, to use an on-going credit repayment plan where FiberLight "credited" BISD for \$989.00 per month, reduced the \$18,434.84 by the credit amount until BISD recuperated the entire Outside Program Expenses - approximately 19 months. BISD would cease to receive a credit and begin paying its obligation after the credit balance was exhausted or the Outside Program Expense was paid in full.

FINDING OF VIOLATION LACKS MERIT

USAC Help Desk:

FiberLight contacted USAC's help desk, and requested confirmation and recommendations regarding the proposed method of repaying the Outside Program Expenses. FiberLight points to two areas of special focus from the communication between FiberLight and USAC help desk. First, FiberLight sought direction and confirmation from USAC, which supports the notion that FiberLight is not seeking to circumvent the process or the program. Instead, FiberLight tried to ensure it was following all applicable rules. As such, FiberLight relied on USAC's response to its direct and clear requests that included:

1. "[FiberLight] would like to verify the USAC's recommendations or requirements..."
2. "Does this credit repayment program create any issues for USAC, the customer or FiberLight?"
3. "Please advise if FiberLight can use this credit repayment program based on the customer preference..."

FiberLight plainly laid out the circumstances, included formulas, and included the method in which credit would be applied to satisfy the settlement agreement. The second area of focus stems from USAC's response to the FiberLight's request for direction, recommendation, and confirmation. In response, USAC stated:

Thank you for your inquiry.

The proposed method of recovering credits from future services owed *does not* present a rule issue. It would be noted though, that to the extent that the original services which were the basis of the credit were paid by USAC then USAC should receive their commensurate value. **Thus if the amounts credited were based on USAC paid charges then USAC should receive 78% of those credits.** (Emphasis added).

USAC Help Desk Response (Exhibit B). As clearly stated in USAC's response, "*The proposed method ...does not present a rule issue.*" Relying on this response, FiberLight executed the proposed method of satisfying the settlement agreement between BISD and FiberLight.

Credit Basis:

USAC also provided FiberLight the circumstances in which USAC should also receive a credit. USAC states, “...if the amounts credited were based on USAC paid charges then USAC should receive 78% of those credits.” This statement shows that FiberLight is not in violation of USAC rules, because the amount credited was part of a settlement agreement not involving USAC.

The credited amount was solely based on Outside Program Expenses that USAC has not paid to FiberLight or BISD. The mere fact that FiberLight and BISD decided on monthly credits in the same amount as BISD’s obligation was for convenience and efficiency only, and unrelated to USAC / eRate program. FiberLight and BISD could have opted for credit amounts of \$2.00 per month, \$5,000 per month, or even single check of \$18,434.84. Instead, both BISD and FiberLight agreed to utilize the more business conscious approach of applying credit, which again, was approved by USAC’s help desk (“The proposed method of recovering credits from future services owed does not present a rule issue”).

CONCLUSION

Based on USAC’s response to FiberLight’s inquiry, in conjunction with FiberLight’s actions, it is clear and without doubt that finding FiberLight disbursed funds in violation of USAC’s rules fundamentally lacks merit. For absolute clarity, *the Outside Program Expenses covered by the settlement agreement were: (1) the result of actions occurring prior to and outside of the USAC relationship with BISD and FiberLight; (2) paid solely by BISD prior to the USAC relationship with BISD and FiberLight; and (3) paid for by BISD without any funding, assistance, or discounts from USAC / eRate program. USAC is not a party to the settlement agreement and has no claim regarding the settlement agreement between BISD and FiberLight.*

Moreover, FiberLight presented USAC with the proposed method and USAC stated, “[t]he proposed method ...does not present a rule issue.” FiberLight and BISD based its decision to pursue the proposed method on the guidance of USAC. Additionally, if the basis of a credit to USAC is turns on whether USAC paid charges, FiberLight remains in compliance, because the credit to BISD was based on expenses that were incurred by BISD outside the USAC / eRate program. More importantly, the Outside Program Expenses were paid for by BISD without any USAC / eRate program benefits to include discounts, funding, or reimbursement.

To find a violation where USAC’s help desk previously stated that a violation would not occur, and where the basis of the credit proposed does not involve USAC discredits USAC’s help desk, its direction, and the policies in which it enforces. This is especially true considering the openness of FiberLight in requesting direction, confirmation, and even recommendations after providing the entire “picture.” Further, it would create an environment of inconsistency that ultimately hinder business or result in inefficient business practices.

Based on the entirety of this letter and the circumstances presented, FiberLight requests:

1. The determination that FiberLight owes no *money, credit, or reimbursement* to USAC;
2. that the finding of any violation be overturned; and
3. FiberLight be found to have been well within the rules of USAC / eRate program.

If you have any questions or are in need of any additional information, please do not hesitate to contact me at (678) 824-6634 or Kimberly.Roholt@FiberLight.com

Sincerely,

/s/ Kimberly Roholt

Kimberly Roholt
Corporate Counsel

Enclosures: Exhibits A – F



11700 Great Oaks Way
Suite 100
Alpharetta, GA 30022
Direct Phone: 678-824-6634
Cell Phone: 706-799-7056
Extension: 20634



USAC – Schools and Libraries Division
30 Lanidex Plaza West
PO Box 685
Parsippany, NJ 07054

FiberLight, LLC
11700 Great Oaks Way, STE 100
Alpharetta, GA 30082

Re: Form 471 application number 904079, SPIN number 143034904 - USAC dispute

Dear USAC eRate help center with the Schools and Libraries division,

FiberLight, LLC is formally disputing your Demand Payment Letter with regard to the Notification of Improperly Disbursed Funds. Under FiberLight, LLC's Appeal Status- Case 22-702596, Form 471 application number 904079, SPIN number 143034904, we (FiberLight) are clarifying that at no time have we issued credits (\$0) to Ballinger Independent School District (BISD) based on USAC paid charges.

The \$18,434.84 credit BISD received from FiberLight, LLC was, for lack of a better term, a settlement for an alleged breach of an agreement. Specifically the credit stems from delays in FiberLight delivering our fiber services to the BISD campus by the original contracted date. Since FiberLight's delivery was delayed BISD incurred \$18,434.84 in overages, month-to-month fees and additional engineering costs to support their internet services in July and August of 2013 while FiberLight completed its major construction project to build fiber services into the BISD campus. Thus, FiberLight agreed to reimburse BISD the excess cost it incurred having to cover for FiberLight's delay in delivery in July and August of 2013. Rather than simply give a check to BISD, it was determined that FiberLight would credit the \$18,434.84 to BISD's account. This all commenced and the credit/settlement was reached prior to USAC related eRate services. USAC related eRate services for BISD did not commence until September of 2013.

Per USAC dispute 22-672247, it is noted, "that to the extent that the original services which were the basis of the credit were paid by USAC then USAC should receive their commensurate value. Thus if the amounts credited were based on USAC paid charges then USAC should receive 78% of those credits." Again, per our note above, we are clarifying that FiberLight has issued **NO** credits (\$0) to BISD based on USAC paid charges. The \$18,434.84 credit Ballinger ISD received from FiberLight was to cover BISD's temporary services with a non-USAC funded contract for month to month services in July and August of 2013 (see their attached invoice for reference).

In accordance with 4 calls to the USAC help desk from August, 2013 to present, we have been consistently advised that issuing credits against a customer's balance of their USAC invoice is a sanctioned, acceptable practice. As such, we established a billing plan where we issued credits to the customer on a monthly basis to cover / offset their portion of their USAC invoice until the credit was exhausted.

Based on the size of the credit and the explicit approval by the USAC help desk, both BISD and FiberLight agreed upon an extended credit repayment program in which FiberLight would deduct their portion of their monthly fees against the credit balance until their credit ran out in approximately 19 months. With

BISD invoiced under USAC's billing method #2 / Service Provider Invoice (SPI), we devised the following formula to issue the credit owed over approximately 19-months:



- BISD's total (100%) monthly recurring fees are \$4300 for contracted services.
- The USAC / eRate discount for Ballinger was 77% or \$3311 per month at the time we commenced services in September, 2013.
- Ballinger's portion of the invoice was 23% or \$989 per month.
- Both Ballinger and FiberLight agreed to deduct \$989 from the credit balance of \$18,434.84 until the credit balance was exhausted in approximately 19 months.
- USAC was to be billed normally for their portion of the bill (\$3311) per the direction of your helpdesk.

Lastly, the credit given to BISD was not service related in any way but rather was a payment that FBL owed to BISD for a delay in delivering the services and occurred prior to USAC eRate services. In this instance FBL had two options. 1) FBL could have simply issued a check to BISD for the \$18, 434.84 in damages it incurred from FBL's delay or 2.) FBL could credit that amount to BISD's accounts. **FBL consulted with USAC and per the explicit direction of USAC's help desk FBL was advised to issue a credit to BISD for BISD's portion of their service.**

In closing, FiberLight does not owe USAC's eRate Schools and Libraries division the \$19,866.00 demanded as improperly disbursed credits per our details provided in this letter. Furthermore, FiberLight's delayed subscription to the eRate program for BISD saved the USAC program \$6622 (\$3311 x 2 months) during July and August of 2013 by delaying BISD's eRate eligible services from the USAC program, funds FiberLight paid out of pocket due to our breach of an agreement with BISD. We formally request the USAC formally clear FiberLight, LLC of any improperly disbursed fees (\$19,866), our USAC / eRate account be returned to good standing and this matter be resolved with the USAC and FCC.

Thank you,

Patrick Stewart

Sales Support & Service Delivery Manager

FiberLight, LLC
11700 Great Oaks Way
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patrick.stewart@fiberlight.com
[678-824-6639] (o)
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FiberLight, LLC NOC: 800-672-0181



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2013-2014

March 27, 2015

Patrick Stewart
Fiberlight, LLC
11700 Great Oaks Way
Suite 100
Alpharetta, GA 30022

Re: Applicant Name: BALLINGER INDEP SCHOOL DIST
Billed Entity Number: 141151
Form 471 Application Number: 904079
Funding Request Number(s): 2459815
Your Correspondence Dated: January 09, 2015

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision regarding your appeal for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision. If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 2459815
Decision on Appeal: **Dismissed**
Explanation:

- USAC thoroughly assessed the facts presented in the appeal letter, the relevant documentation on file, and the FCC Rules and Procedures before making its determination on the appeal. The record shows that on 9/26/2014, FiberLight, LLC appealed USAC's Funding Year 2013 Notification of Improperly Disbursed Funds Recovery Letter for the Application Number listed above. The record further shows that on December 23, 2014, USAC denied your appeal. As a result, Demand Payment letters have been issued. These Demand Payment Letters (which you are appealing) are requests for payment and are not the USAC decision on the Commitment. Consequently, your appeal is being dismissed.

Since your appeal was denied in full, dismissed or cancelled, you may file an appeal with the FCC. Your appeal must be postmarked within 60 days of the date on this letter.

Failure to meet this requirement will result in automatic dismissal of your appeal. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found under the Reference Area/"Appeals" of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

cc: Tim Gau

Patrick Stewart
Fiberlight, LLC
11700 Great Oaks Way
Suite 100
Alpharetta, GA 30022

Billed Entity Number: 141151
Form 471 Application Number: 904079
Form 486 Application Number:

Patrick Stewart

From: sldnoreply@sl.universalservice.org
Sent: Monday, September 22, 2014 3:07 PM
To: Patrick Stewart
Subject: RE: Initial Contact- Case 22-672247

Thank you for your inquiry.

The proposed method of recovering credits from future services owed does not present a rule issue. It would be noted though, that to the extent that the original services which were the basis of the credit were paid by USAC then USAC should receive their commensurate value. Thus if the amounts credited were based on USAC paid charges then USAC should receive 78% of those credits.

If you have any further questions, please feel free to contact our Schools and Libraries Helpline at 1-888-203-8100. Please remember to visit our website for updates: <http://www.usac.org/sl>

Thank you,
Schools and Libraries Division
Universal Service Administrative Company

-----Original Message-----

From: patrick.stewart@fiberlight.com
Subject: Initial Contact

[FirstName]=Patrick
[LastName]=Stewart
[JobTitle]=Sales Support Manager
[EmailAddress]=patrick.stewart@fiberlight.com
[WorkPhone]=6788246639
[FaxPhone]=
[PreviousCaseNumber]=0

[FormType]=Inv General Inquiries
[Owner]=TCSB
[DateSubmitted]=9/10/2014 1:30:33 PM
[AttachmentFlag]=Y[Question2]=Dear USAC eRate help center with the Schools and Libraries division,

I would like to verify the USAC's recommendations or requirements in how a service provider such as Fiberlight should provide a current eRate customer credits for monies owed to them for a service related issue.

FiberLight currently provides services to a customer who has a 78% eRate discount percentage under the Schools and Libraries program. We have established a billing plan where we provide the customer discounts on a monthly basis consistent with USAC invoice method #2 / Service Provider Invoice (SPI).

Our credit owed to the customer stems from a two month delay in delivering services in which the customer incurred significant fees (around \$18K) to sustain services while our construction was completed. FiberLight completed construction and delivery of internet services two months late and commenced service and billing in September of 2013.

Based on the size of the credit, the customer and FiberLight agreed upon a credit repayment program in which we would deduct their portion of their monthly fees until their credit ran out in about 19 months.

Our thoughts are to invoice the customer for their total monthly recurring fees and outline the total (100%) monthly recurring fees, the USAC portion of the balance (78% balance) and finally the customer portion of the invoice (22%).

Per the customer agreement in how to repay the monies, we would like to then highlight the remaining customer credit balance, deduct the customer's portion of the invoice (\$989) from our credit balance (\$18K down to \$0 (zero)) until the credit balance was exhausted.

Here is an example of our formula:

- Our customer's total (100%) monthly recurring fees are \$4300 for contracted services
- The USAC / eRate discount is 78%, so the invoice would show the USAC monthly portion of the invoice at \$3311 of the MRC's
- Our customer's obligation would be solely remaining portion of the MRC's (22%) or \$989.
- Then essentially show, 1/1/2014 invoice amount of \$989 against the credit balance of \$18K, the debits versus credits and a new credit balance of roughly \$17K and so forth.

Just to clarify, we want to verify that when we invoice the customer, we show the total MRC (\$4300), the USAC and customer related fees (78% and 22% respectively) and then use an on-going credit repayment program where we pull the \$989 from the \$18,000 credit balance until the credit balance is exhausted in approximately 19 months.

Does this credit repayment program create any issues for USAC, the customer or FiberLight? If so, what are our options to repay the credit outside of remitting a full payment via check?

Please advise if FiberLight can to use this credit repayment program based on the customer preference.

Regards,
Patrick Stewart
678-824-6639

yes, I will send by email or electronically